the suit is still pending if time still remains for application for modification of the opinion. *State* v. *Tugwell,* 19 Wash. 238, 52 Pac. 1056, 43 L. R. A. 717. Case was not pending in lower court while pending in upper court on appeal. *In re Dalton, supra; Dunham* v. *State,* 6 Iowa, 245. In *Post* v. *State, supra,* and *Metzger* v. *Gounod,* 30 L. T. N. S. 264, it was held that a trial is not pending after judgment, although the time within which to move for new trial has not expired; but there is a dictum in *Fishback* v. *State,* 131 Ind. 304, to the contrary effect. In the principal case, although judgment had been rendered and the Secretary of State had been instructed to proceed with the printing of the ballots in accordance with that judgment, and although the carrying out of these instructions was not held up until the petition for rehearing had been acted upon, nevertheless the case was held to be still pending because the rules of the court allowed 20 days for the filing of a motion for rehearing. We have here a good illustration of the liberality of some courts in deciding when a case is pending before them.

CONTRACTS—MUTUAL BENEFIT ASSOCIATIONS.—Defendant is a mutual benefit association organized under the laws of Massachusetts, and plaintiff became a member of it in 1883, at which time the death rate of assessment upon members was $1.80 for each death. In 1898 the rate was changed, with the consent of plaintiff, to $3.16 for each death. In 1905 defendant again changed its rates so as to assess plaintiff $6.87 per month. The last change was made without notice to plaintiff and without his consent. Plaintiff in his application for membership agreed to "conform in all respects to the laws, rules and usages of the order now in force or which may hereafter be adopted." Plaintiff brings this action to obtain adjudication of his rights on the contract. *Held* that defendant under the above reservation of power to amend its by-laws is not authorized to amend the laws of the order so as to increase plaintiff's assessment. *Green* v. *Supreme Council of Royal Arcanum,* (N. Y. 1912.) 100 N. E. 411.

The New York Court adheres to the view taken under similar facts in *Wright* v. *Maccabees,* 196 N. Y. 391, 89 N. E. 1078, 31 L. R. A. (N. S.) 423; *Ayres* v. *Order of United Workmen,* 188 N. Y. 280, 80 N. E. 1020; *Dowdall* v. *Sup. Council Cath. Mut. Ben. Ass'n,* 196 N. Y. 405, 89 N. E. 1078, 31 L. R. A. (N. S.) 417. The view of the principal case is also supported in *Smythe* v. *Sup. Lodge,* 198 Fed. 967; *Olson* v. *Ct. of Honor,* 100 Minn. 117, 110 N. W. 374; *Wilcox* v. *Ct. of Honor,* 134 Mo. App. 547, 114 S. W. 155; *Fort* v. *Iowa Legion of Honor,* 146 Iowa 183, 123 N. W. 224; *Council of Honor* v. *Rauch* (Ind.) 95 N. E. 1018; *Hale* v. *Equitable Aid Union,* 168 Pa. 377, 31 Atl. 1066; *Gaunt* v. *Sup. Council,* 107 Tenn. 603, 64 S. W. 1070. Cases holding contrary to the principal case are: *Reynolds* v. *Sup. Council,* 192 Mass. 150, 78 N. E. 129; *Royal Arcanum* v. *McKnight,* 238 Ill. 349, 87 N. E. 229; *Williams* v. *Sup. Council,* 152 Mich. 1, 115 N. W. 1060. See note on the general question in 11 MICH. L. REV. 318.

CONTRACTS—PUBLIC POLICY.—Plaintiff, an attorney with an established practice, and defendant, a young attorney without experience, formed a partnership, stipulating in a partnership agreement as to the division of the

proceeds of the firm. At the time of this agreement, plaintiff held the office of prosecuting attorney. After the firm was established, plaintiff agreed not to run again for the office of prosecuting attorney and agreed to assist the defendant in securing the office. Defendant was elected, and after he went into office plaintiff and defendant again contracted with each other, among other things, that the salary of the defendant, as prosecuting attorney, should be equally divided between them. The partnership was continued for a short time, when defendant declined to go on with the partnership, and plaintiff brought suit. *Held* that the contract providing for the division of the salary of the defendant as prosecuting attorney is contrary to public policy, as being in effect an assignment of the unearned emoluments of a public office, and the agreement is therefore unenforceable. *Anderson* v. *Branstom,* (Mich. 1912.) 139 N. W. 40.

MOORE, C. J. wrote a dissenting opinion saying in part, "If the contract made between the parties here was faithfully carried out, it is difficult to see how the public would be harmed. Prosecuting attorneys are so often members of a firm of lawyers that we might take judicial notice that such partnerships exist. We are not satisfied that the public is harmed by such a contract." In *Thurston* v. *Fairman,* 9 Hun 584, the partners of a firm agreed "That all salaries from any office or employment is the property of the firm". The court, after recognizing the well established rule that an assignment of unearned salary by a public officer is void as against public policy, said: "But the case in hand is not an assignment of unearned salary when all control over the expected funds even in their reception in the first instance is passed over to another. It is but an agreement as to the manner in which the salary shall be employed when earned and paid. The case as between the parties rested in contract, and their agreement involved only personal interests. The agreement did not take away the right to receive the salaries at such periods as the law appointed for payment. * * * All incentive to efficiency and fidelity in the public service remained unimpaired by their stipulations in regard to the disposal of the fund when received. We are, therefore, of the opinion that no principle of public policy is involved which should relief the parties from its performance", and in *McGregor* v. *McGregor,* 130 Mich. 505, 90 N. W. 284, 97 Am. St. Rep. 492, an agreement by a boiler inspector that his salary when earned should become assets of a partnership of which he was a member was held not to be against public policy as an assignment of unearned salary by a public officer; but that the assignment was rather an agreement as to the manner in which the salary should be disposed of when earned and paid. On the authority of *Thurston* v. *Fairman, supra,* GREENHOOD, PUBLIC POLICY, 351, makes an exception to the general rule that the salaries of public officers are not assignable, in cases where the assignor derives no benefit from such assignment until the subject thereof is earned, and the assignment is part of a legitimate business scheme. The ground for the distinction seems to be that in cases of partnership the agreement does not amount to an assignment of emoluments of an office, but only to an agreement as to the manner in which the salary shall be employed or disposed of when earned and paid. The distinction is rather

fine and the principal case undoubtedly comes nearer to following the spirit and reasoning of the rule, when it holds such agreements are in effect assignments of the emoluments of the office and therefore void as against public policy.

CORPORATIONS—SERVICE OF PROCESS IN ANOTHER STATE AS "DUE PROCESS OF LAW."—*A* suit was brough against a domestic corporation on an agreement to convey lands. There were no officers of the corporation within the state at that time, and the summons and complaint were served on the treasurer of the corporation, residing in another state, by the sheriff of the county in which the treasurer resided. Judgment was taken by default, and defendant appeals on the ground that such service is not "due process of law." The statute does not say that service of summons on a domestic corporation shall be made within the state, but does so provide in regard to foreign corporations. *Held,* that a domestic corporation is at all times within the territorial jurisdiction of the state courts, that the purpose of the statute is not to bring the non-resident officer within the jurisdiction, but to bring the domestic corporation within the jurisdiction; and as such service would give sufficient notice of the pendency of the action or proceeding, which is the fundamental requirement of "due process of law," it was sufficient. *Straub* v. *Lyman Land & Investment Co.* (S. D. 1912) 138 N. W. 957.

An examination of the authorities has failed to disclose a case directly in point. A domestic corporation is necessarily resident within the state, and cannot remove itself therefrom, either permanently or temporarily. 1 THOMPSON, CORP., Ed. 2, § 490; 1 COOK, CORP., Ed. 6, § 1; *Bank of Augusta* v. *Earle,* 13 Pet. 519, 10, L. ed. 274. The domicile of a corporation is entirely distinct from the personal domicile of its officers or stockholders. *Perry* v. *Round Lake Assoc.,* 22 Hun 293. Since a corporation is a mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as an incident to its very existence. 1 THOMPSON, CORP., Ed. 2, §3. A legislature has power to prescribe the method of service on corporations, subject only to the rule that the method provided must be one that with reasonable certainty will result in a corporation actually receiving the notice. 3 THOMPSON CORP., Ed. 2, § 3050; *State* v. *Myers,* 126 Mo. App. 544, 104 S. W. 1146; *Town of Hinckley* v. *Kettle River R. Co.,* 70 Minn. 105, 72 N. W. 835. The service of process here may be said to follow the forms of law, and was apropriate to the case and just to the parties to be affected. It was therefore "due process of law." *Hagar* v. *Reclamation Dist.* 111 U. S. 70; *Hurtado* v. *California,* 110 U. S. 516.

DEEDS—RESERVATIONS AND EXCEPTIONS.—A tract of 40 acres and a smaller tract, upon which there was a mill, were owned by one person. The mill was run by water power. Feb. 4, 1870, the mill property was mortgaged, by a foreclosure of which and by subsequent mesne conveyances the premises came to defendant. In a foreclosure of a mortgage upon the 40 acre tract there was a conveyance of the same on July 16, 1870, "excepting and reserving the right to any and all persons who may at any time hereafter own the